Filed 5/15/12 In re Jacob F. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re JACOB F., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B237352 (Super. Ct. No. J1379555) (Santa Barbara County)
SANTA BARBARA COUNTY CHILD WELFARE SERVICES, Plaintiff and Respondent, v. MELISSA C., Defendant and Appellant.	

Melissa C. (mother) appeals the juvenile court's order terminating parental rights and selecting adoption as the permanent plan for her minor child, Jacob F. (Welf. & Inst. Code, § 366.26 et seq.) Mother contends that respondent Santa Barbara County Child Welfare Services (CWS) failed to comply with the notification requirements of the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.). We affirm.

FACTS AND PROCEDURAL HISTORY

Jacob F. was taken into custody in October 2010, when he was 11 months old. The section 300 petition alleged among other things that the minor's father, Michael

F.,[1] had been arrested on an outstanding warrant and that mother had been found in possession of opiate medication for which she did not have a prescription. Mother also has longstanding mental health issues and a criminal history that includes multiple charges for possessing a controlled substance.

The Indian child inquiry attachment to the petition (form ICWA-010(A)) states that the minor may have Indian ancestry. According to the attachment, Dora F., the minor's maternal great aunt had "stated that the family has always been told they are Apache." The social worker also spoke to Yolanda F., the maternal grandmother, and provided the following summary of their conversation: "Yolanda F[.] confirmed Dora F[.]'s statement and said her grandfather lived/grew up in Gallup, NM. He never attempted to enroll in the tribe; she believes the tribe is Mescalero Apache." This information was also included in the detention report.

At the detention hearing, mother and father both submitted the parental notification of Indian status (form ICWA-020) indicating that they did not have Indian ancestry. Both parents also represented through counsel that they were unaware of any Indian heritage. The court found that the ICWA did not apply. The parties thereafter submitted to temporary detention and the matter was set for a jurisdiction and disposition hearing.

At the conclusion of the jurisdiction and disposition hearing, mother was granted reunification services and was ordered to participate in a case plan requiring her to refrain from using illegal drugs and alcohol and submit to drug testing. At the six-month status review hearing, CWS recommended that reunification services be terminated and the matter set for a section 366.26 hearing. CWS reported among other things that mother had recently been arrested on a probation violation after she tested positive for methamphetamine, alcohol, and marijuana. On July 29, 2011, reunification services were terminated and the section 366.26 hearing was set for October 27, 2011.

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[1] Michael F. is not a party to this appeal.

At the section 366.26 hearing, the court adopted CWS's recommendation by terminating mother's parental rights and selecting adoption as the minor's permanent plan. The court denied mother's section 388 petition seeking additional services on the ground of changed circumstances. The court also rejected mother's claim that the parental benefit and sibling relationship exceptions to adoption applied. (§ 366.26, subds. (c)(1)(B)(i) & (c)(1)(B)(v).) Mother timely appealed.

DISCUSSION

Mother contends the order terminating parental rights must be reversed because the juvenile court erred in determining the ICWA did not apply. She argues that a duty to give ICWA notice was triggered by information suggesting that the minor's great-great-grandfather may have been descended from the Mescalero Apache tribe. We disagree.

The ICWA was enacted "to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children 'in foster or adoptive homes which will reflect the unique values of Indian culture . . . .'" (*In re Levi U.* (2000) 78 Cal.App.4th 191, 195; 25 U.S.C. § 1902; *Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30.) The duty to provide notice under the ICWA arises when "the court knows or has reason to know that an Indian child is involved . . . ." (25 U.S.C. § 1912(a).)

An "Indian child" is one who is either a "member of an Indian tribe or . . . eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).) The juvenile court has reason to know a child is an Indian child when "[a] person having an interest in the child . . . provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child's biological parents, grandparents, or great-grandparents are or were a member of a tribe." (Welf. & Inst. Code, § 224.3, subd. (b)(1).) Any notice sent to tribes of which a child may be a member must therefore include "[a]ll names known of the

Indian child's biological parents, grandparents, and great-grandparents." (*Id.* at § 224.2, subd. (a)(5)(C).)

Although the Indian status of a child need not be certain or conclusive to trigger the ICWA's notice requirements (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 471), those requirements are not triggered if the information suggesting Indian heritage is "too vague, attenuated and speculative." (*In re J. D.* (2010) 189 Cal.App.4th 118, 125.) Here, the minor's maternal great aunt and maternal grandmother indicated "that the family has always been told they are Apache" and that the minor's great-great-grandfather may have been a descendant of the Mescalero Apache tribe. The statutory language of the ICWA, however, expressly limits the number of generations the court must consider in determining whether there is reason to know a child is an Indian child, i.e., the court need only go back as far as the great-grandparents. (Welf. & Inst. Code, §§ 224.2, subd. (a)(5)(C), 224.3, subd. (b)(1).) Because the court was merely presented with information suggesting that the minor's *great-great-grandfather* may have had Indian heritage, that information did not trigger the court's duty to give notice under the ICWA. (See *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1539 [ICWA notice not required where the minor's maternal grandmother indicated that the minor's great-great-great-grandmother was a Comanche princess]; see also *In re Z.N.* (2009) 181 Cal.App.4th 282, 298 [mother's stated belief that one of her grandmothers was Cherokee and that the other was part Apache did not trigger duty to send ICWA notice with regard to mother's minor twins because "[w]hatever the status of the grandmothers, they were great grandmothers of the twins, and this information did not suggest that the twins were members or eligible for

membership as children of a member"].)

The judgment (order terminating parental rights) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Arthur A. Garcia, Judge

Superior Court County of Santa Barbara

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

Dennis A. Marshall, County Counsel, Sarah A. McElhinney, Deputy Counsel, for Plaintiff and Respondent.